



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2019-0036; FRL-9999-67-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland;
Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Maryland for the 2015 ozone national ambient air quality standard (NAAQS or standard). Whenever EPA promulgates a new or revised NAAQS, states are required to make a SIP submission showing how the existing approved SIP has all the provisions necessary to meet certain SIP requirements for the new or revised NAAQS, or to add any needed provisions necessary to meet these requirements. The SIP revision is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Maryland has made a submittal addressing the infrastructure requirements for the 2015 ozone NAAQS. EPA is approving Maryland's SIP revision addressing the infrastructure requirements for the 2015 ozone NAAQS in accordance with the requirements of section 110(a) of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the**

Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2019-0036. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5787. Ms. Schmitt can also be reached via electronic mail at schmitt.ellen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2015, EPA issued a final rule revising both the primary and secondary NAAQS for ozone to 0.070 parts per million (ppm) based on 8-hour average concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to make SIP submissions to meet the applicable requirements of section 110(a)(2) within three years after EPA promulgates a new or revised NAAQS, or within a shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and

legal authority that are designed to assure implementation, maintenance, and enforcement of the new or revised NAAQS. EPA refers to this type of SIP submission as an “infrastructure SIP submission” because it focuses on the basic requirements that a state must have to provide for implementation, maintenance, and enforcement of the NAAQS at issue in the submission.

II. Summary of SIP Revision and EPA Analysis

On October 11, 2018, EPA received from the State of Maryland, through the Maryland Department of the Environment (MDE), a formal SIP submission (#18-06) to satisfy the requirements of section 110(a) of the CAA for the 2015 ozone NAAQS. EPA reviewed Maryland’s submittal and, subsequently on April 24, 2019, published a notice of proposed rulemaking (NPRM) regarding this submittal. See 84 FR 17125. The SIP submission addressed the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

The rationale supporting EPA’s proposed rulemaking action, including the scope of infrastructure SIP submissions in general, is explained in the published NPRM and the technical support document (TSD) and will not be restated here. The NPRM and TSD are available in the docket for this rulemaking at <https://www.regulations.gov>, Docket ID Number EPA-R03-OAR-2019-0036.

III. Public Comment and EPA’s Response

EPA received comments from one commenter in response to the April 24, 2019 proposed approval of Maryland’s 2015 ozone NAAQS infrastructure SIP. The commenter did not provide any personal information, such as a name or group affiliation, and therefore is considered

anonymous. The commenter opposed EPA's proposed approval of the SIP submission on several grounds. The full text of the comment is in the docket for this rulemaking action.

Comment 1: The commenter claims that EPA was incorrect in proposing to find that Maryland's 2015 ozone NAAQS infrastructure SIP submittal met the requirements of section 110(a)(2)(A) of the CAA, because Maryland is not attaining the 2015 ozone NAAQS of 70 parts per billion (ppb).¹ The commenter cites and includes data from MDE's website showing 16 days when monitor data showed exceedances of the NAAQS in 2018, and notes that the number of exceedances increased from 11 in 2014.

EPA Response: EPA disagrees with the commenter regarding the approvability of Maryland's infrastructure SIP submittal with respect to the requirements of CAA section 110(a)(2)(A) for the 2015 ozone NAAQS. First, in this action, EPA is evaluating the State's infrastructure SIP submission. In this context, EPA is not determining whether or not Maryland has met all of the potential emissions control requirements that may or may not ultimately be necessary in order to comply with CAA section 110(a)(2)(I), and part D, subpart 2 SIP requirements for nonattainment areas. In the context of evaluating an infrastructure SIP submission, EPA interprets section 110(a)(2)(A) of the CAA at this early stage of planning for a new or revised NAAQS only to require a state to identify the existing control measures already in the existing SIP that provide for implementation, maintenance, and enforcement of the 2015 ozone NAAQS. Section 110(a)(2) requires that each SIP "include enforceable emission limitations and other control measures, means, or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of [the CAA]," which in this case is the 2015 ozone standard. In later phases of SIP planning, in particular to meet

¹ 70 ppb converts to 0.070 ppm.

requirements for nonattainment plan SIP submissions in designated nonattainment areas, states are required to adopt additional measures to provide for attainment of the NAAQS, as applicable. EPA has provided guidance explaining that nonattainment plan SIP submission requirements are separate from infrastructure SIP submission requirements.²

Second, to the extent that Maryland needs to adopt and submit any additional emission controls in nonattainment areas in order to attain the 2015 ozone NAAQS, the State will need to do so in a different type of SIP submission that it must submit later. EPA reviews an infrastructure SIP submittal to verify that the state's SIP provides for the implementation, maintenance, and enforcement of the NAAQS and that any additional requirements for a new NAAQS is met, but not to evaluate whether the state has met any potential nonattainment area plan requirements that apply separately and later. Under subpart 2 of part D of title I of the CAA, state planning and emissions control requirements in a nonattainment area for ozone are determined, in part, by the area's classification. Under subpart 2, EPA initially classified ozone nonattainment areas based on the severity of their ozone levels, as determined by the area's design value relative to the lower and upper design value thresholds for each classification. Nonattainment areas with a lower classification, such as "marginal," have ozone levels at the time of designation that are closer to the standard than areas with a higher classification. Ozone nonattainment areas in the lower classification levels have fewer initial mandatory air quality planning and control requirements than those in higher classifications. EPA designated several areas within Maryland as marginal nonattainment areas for the 2015 ozone NAAQS. 83 FR 25776, 25812 (June 4, 2018); 40 CFR 81.321. Section 182 of the CAA requires states with ozone nonattainment areas

² See, Memorandum dated September 13, 2013, entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions 1 – 10. A copy of this guidance is in the docket for this action.

to submit various SIP elements within specified time frames. States with areas designated as marginal nonattainment have two years from the effective date of designation to submit SIP revisions addressing emissions inventories (required by CAA section 182(a)(1)), reasonably available control technology (CAA section 182(b)(2)) and certain emissions statement regulations.³ Maryland's effective date for the initial nonattainment designation for the 2015 ozone NAAQS was August 3, 2018, so the nonattainment SIP elements for Maryland for the 2015 ozone NAAQS are not due until August 3, 2020. CAA section 181 provides an increasing amount of maximum time from the date of designation to attain the standards for the progressively higher classifications: Marginal—3 years, moderate—6 years, serious—9 years, severe—15 or 17 years, and extreme—20 years. Under EPA's interpretation of section 181 of the CAA, marginal nonattainment areas have up to three years after the effective date of the nonattainment designation to attain the 2015 ozone NAAQS. 40 CFR 51.1302. Thus, Maryland's marginal nonattainment areas for the 2015 ozone NAAQS have until June 4, 2021 to come into attainment. EPA's review of Maryland's infrastructure SIP submittal indicated that the State has numerous SIP approved regulations in place to control and reduce emissions of the ozone precursors nitrogen oxides (NO_x) and volatile organic compounds (VOCs).

Third, regarding the ambient ozone measurements referenced by the commenter, EPA agrees that some of these preliminary 8-hour concentrations exceed the 0.070 ppm numerical level of the 2015 ozone NAAQS. However, an individual 8-hour average measurement at an individual monitor is not indicative of whether the 2015 ozone NAAQS has been violated in an area. The standard is met at an air quality monitor when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to the 2015 ozone

³ Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements. 83 FR 62998 (December 6, 2018).

NAAQS (0.070 ppm). 40 CFR 50.19(b). Thus, three full years of data for each monitor is required, and more specifically, it is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration that is needed to ascertain if a monitor is attaining or not. None of the numerical values cited by the commenter, by themselves, can be used to determine if the monitor or area is violating the NAAQS. The commenter referred several times to preliminary daily ozone values and seemed to infer that these daily values could be compared to the 2015 ozone standard. This is misleading as the 2015 ozone standard is not measured by a singular day's reading. Therefore, the daily monitor readings are not comparable. Finally, EPA disagrees with the commenter that the Agency stated in the proposed approval notice that Maryland is currently attaining the 2015 ozone NAAQS. However, as mentioned previously, the State has until 2021 to attain.

Comment 2: The commenter questioned EPA's proposed finding that Maryland has the necessary funding and personnel to implement the SIP, as required by CAA section 110(a)(2)(E)(i), and EPA's proposed finding that the SIP required major stationary sources to pay adequate permit fees to cover the cost of reviewing and acting upon a permit application, and that it was adequate to cover the cost of ensuring the permits are followed, as required by CAA section 110(a)(2)(L). The commenter questioned whether EPA has a formula for making these determinations, or hired a qualified forensic accountant to comb through MDE's finances to determine the financial stability of MDE. The commenter questions EPA's methods for evaluating the adequacy of Maryland's staffing and budget levels.

EPA Response: As stated in the proposed approval for this action, EPA's evaluation indicates that the State of Maryland has the staffing and funding resources to meet SIP obligations in

accordance with section 110(a)(2)(E) of the CAA. Maryland's infrastructure SIP submission for the 2015 ozone NAAQS (SIP submittal) indicated that MDE's Air and Radiation Division has a budget of \$19.5 million for fiscal year 2019, which is on par with its budgets in 2017 and 2018, and currently has 167 personnel in the Air and Radiation Division. SIP submittal, pp. 7-8.

These budget and staff levels have been consistent over the past number of years and over these years Maryland has been able to meet its statutory commitments, including submitting the required air quality data, attainment plans, and monitoring network plans.

In addition, the SIP submittal cited the state law allowing MDE to seek funding, as well as the various funding sources for its programs, including CAA section 103 and 105 grants, the Maryland Clean Air Fund, permit fees, fees from vehicle emission inspections, and funds received from the Maryland Department of Transportation to help fund transportation-related air pollution programs. SIP submittal, pp. 7-8. Maryland also has an EPA-approved fee program under CAA title V which is used to support title V program elements such as permitting, monitoring, testing, inspections, and enforcement. EPA conducts periodic title V fee and program audits in accordance with generally accepted government auditing standards. Maryland regulation COMAR 26.11.02.19 provides fee schedules and other relevant fee information regarding title V permits and state permits to operate. Regarding Maryland's CAA section 105 funding, Maryland's use of the funds is evaluated through the evaluation process requirements of 40 CFR part 35, subpart A, which call for the State and EPA to jointly evaluate and report progress and accomplishments under the work plan.⁴ Maryland also has various permit programs that are self-funded as they apply fees for permit applications. Most of these permit program fees can be adjusted if the State determines that the fee does not cover the reasonable

⁴ A programmatic joint evaluation review of Maryland's Air Pollution Control Section 105 Grant work plan was conducted most recently between MDE and EPA on April 17, 2019.

costs of reviewing and acting upon the permit applications. Based on EPA's various reviews of these existing resources, EPA reasonably concluded that Maryland has adequate funding and personnel to implement its SIP.

Comment 3: The commenter asserts that EPA cannot find this infrastructure SIP meets CAA section 110(a)(2)(B) because EPA had to issue a Data Requirements Rule (DRR) for sulfur dioxide (SO₂) because Maryland did not have enough SO₂ monitors to adequately measure SO₂.

EPA Response: EPA disagrees with the commenter's assertion that the SO₂ Data Requirements Rule is proof that Maryland currently does not have an adequate monitoring network for SO₂, and therefore cannot meet the section 110(a)(2)(B) requirements. EPA disagrees with the commenter for three reasons.

First, in this action, EPA is evaluating the state's infrastructure SIP submission for the 2015 ozone NAAQS. Accordingly, for purposes of section 110(a)(2)(B), EPA is evaluating whether Maryland has SIP provisions that provide for things such as required air quality monitoring and submission of required data with respect to the ozone NAAQS, not the SO₂ NAAQS. The scope of EPA's evaluation of section 110(a)(2)(B) is described in the agency's guidance for infrastructure SIP submissions.⁵

Second, EPA has determined that Maryland has met the requirements of section 110(a)(2)(B) for the 2015 ozone NAAQS. Section 110(a)(2)(B) of the CAA requires that each plan shall provide for the establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to EPA. As part of its determination, EPA verified the scope and continuing

⁵ Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements. 83 FR 62998 (December 6, 2018).

validity of the State law authority cited in Maryland's October 11, 2018 infrastructure SIP submission. Additionally, Maryland has SIP approved regulations located under COMAR 26.11.04.02 specifying that methods of measuring ambient air quality levels shall be aligned with those specified in 40 CFR Parts 50, 51, 53 and 58, as amended. In addition, the State has submitted, and EPA has approved, annual network monitoring plans that specifically address the monitoring network requirements for the ozone NAAQS throughout Maryland. Most recently, EPA approved the 2018 annual network monitoring plan and concluded that Maryland's network of monitors meets regulatory requirements and is consistent with applicable guidance.⁶

Finally, the commenter is also incorrect with respect to the current status of SO₂ monitoring in Maryland. Although not relevant in the context of this action on an infrastructure SIP submission for the 2015 ozone NAAQS, EPA notes that the DRR cited by the commenter did not specifically find that Maryland lacked sufficient SO₂ monitors to monitor adequately for purposes of the SO₂ NAAQS. Instead, the DRR required that states identify to EPA by January 15, 2016, those sources of SO₂ within their jurisdiction emitting more than 2,000 tons per year (tpy) of SO₂, or other SO₂ sources or clusters of SO₂ sources warranting evaluation. The DRR then gave states three options for characterizing SO₂ concentrations around these sources: (1) by installing and using SO₂ monitors; (2) by modelling SO₂ concentrations; or (3) by adopting SO₂ limits for the source to keep it below the 2,000 tpy threshold. States were required to choose an option for each source by July 1, 2016. For installation of a new SO₂ monitor(s), states were to include information about the new monitor in the annual network monitoring plan by July 1, 2016. Maryland's 2016 annual monitoring plan identified any new SO₂ monitors to be installed, and EPA's approval of that plan confirmed that the placement of any new SO₂ monitors was

⁶ A copy of EPA's approval letter is in the docket for this action.

acceptable.⁷ More importantly, Maryland was not even required to install monitors if it chose to do SO₂ modeling instead, so any perceived lack of SO₂ monitors could be remedied by modeling. EPA has no information that Maryland is not at this time meeting its obligations under the DRR, even if that were relevant in the context of EPA's evaluation of the State's compliance with section 110(a)(2)(B) in the context of an infrastructure SIP submission for the 2015 ozone NAAQS, which it is not.

III. Final Action

EPA is approving Maryland's October 11, 2018 infrastructure SIP submission which addresses the basic program elements, or portions thereof, specified in sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, necessary to implement, maintain, and enforce the 2015 ozone NAAQS. This rulemaking does not address section 110(a)(2)(I), or the NNSR permitting program requirements of section 110(a)(2)(C), which pertain to the nonattainment planning requirements of part D of the CAA. States are required to make other SIP submissions to meet those nonattainment area requirements later, after completion of designations, and, if required, would be due to EPA by the dates statutorily prescribed in CAA part D, subpart 2. Because the CAA directs states to make SIP submissions to address nonattainment plan requirements on a separate schedule, EPA does not interpret the CAA to require states to address these requirements in the infrastructure SIP submission due three years after adoption of a new or revised NAAQS.

Additionally, this rulemaking does not address CAA section 110(a)(2)(D)(i)(I) (significant

⁷ MDE included its DRR monitoring information in an addendum to the State's 2016 annual monitoring network plan. Maryland's 2016 annual monitoring network plan was approved by EPA on November 10, 2016. For reference, a copy of MDE's DRR addendum to their 2016 annual monitoring network plan can be located in the docket for this rulemaking action at <https://www.regulations.gov>, Docket ID Number EPA-R03-OAR-2019-0036.

contribution to nonattainment or interference of maintenance through interstate transport of air emissions) for the 2015 ozone NAAQS because Maryland's infrastructure SIP submission did not include these elements. EPA will take later, separate action on these requirements once they have been submitted.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action.

This action pertaining to Maryland’s section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 29, 2019.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. In § 52.1070, the table in paragraph (e) is amended by adding the entry “Section 110(a)(2) Infrastructure Requirements for the 2015 ozone NAAQS” at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* *	*	* *	
Section 110(a)(2) Infrastructure Requirements for the 2015 ozone NAAQS	Statewide	10/10/2018	<u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u>	Part 52.1070 is amended. This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action does not address CAA sections 110(a)(D)(i)(I) and 110(a)(2)(I), nor does it address the portion of section 110(a)(2)(C) related to NNSR.